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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 PAUL SAMUEL JOHNSON,

12 Plaintiff,

13 v.

14 RUIZ, et al.,

15 Defendants.
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No. 2:20-cv-0291-EFB P

ORDER

17 Plaintiff is a state prisoner proceeding without counsel in an action brought under 42
18 U.S.C. § 1983. In addition to filing two nearly identical complaints, he has filed an application
19 for leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 and a request for
20 appointment of counsel.

21 Application to Proceed In Forma Pauperis

22 Plaintiff's application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2).
23 However, court records reflect that plaintiff has been designated a three-strikes litigant pursuant
24 to 28 U.S.C. § 1915(g). *See Johnson v. Sonoma Cnty. Main Adult Det. Facility*, No. 14-cv-
25 05397-CW, 2015 U.S. Dist. LEXIS 49780 (N.D. Cal. Apr. 15, 2015). An exception to the three-
26 strikes rule exists "if the complaint makes a plausible allegation that the prisoner faced 'imminent
27 danger of serious physical injury' at the time of filing." *Andrews v. Cervantes*, 493 F.3d 1047,
28 1055 (9th Cir. 2007). Here, the allegations of plaintiff's complaint satisfies the imminent danger

1 exception. *See* ECF No. 1 at 24-25, 51 (alleging that after complaining that his doctor sexually
2 harassed and assaulted him in July of 2019, he was not assigned a new doctor and the accused
3 doctor has since refused to render any medical care to plaintiff, who suffers from numerous
4 serious medical conditions, such as advanced degenerative disc disease, deep tissue blood clots,
5 chest pains, shortness of breath, poor circulation, an umbilical hernia, arthritis, and twenty broken
6 bones that never properly healed). Accordingly, plaintiff's application for leave to proceed in
7 forma pauperis is granted. By separate order, the court directs the agency having custody of
8 plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in
9 28 U.S.C. § 1915(b)(1) and (2).

10 Screening Standards

11 Federal courts must engage in a preliminary screening of cases in which prisoners seek
12 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
13 § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion
14 of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which
15 relief may be granted," or "seeks monetary relief from a defendant who is immune from such
16 relief." *Id.* § 1915A(b).

17 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
18 of the Federal Rules of Civil Procedure. Rule 8(a)(2) "requires a complaint to include a short and
19 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
20 defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v.*
21 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).
22 While the complaint must comply with the "short and plain statement" requirements of Rule 8,
23 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
24 U.S. 662, 679 (2009).

25 To avoid dismissal for failure to state a claim a complaint must contain more than "naked
26 assertions," "labels and conclusions" or "a formulaic recitation of the elements of a cause of
27 action." *Twombly*, 550 U.S. at 555-557. In other words, "[t]hreadbare recitals of the elements of

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1 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
2 678.

3 Furthermore, a claim upon which the court can grant relief must have facial plausibility.
4 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual
5 content that allows the court to draw the reasonable inference that the defendant is liable for the
6 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a
7 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*
8 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the
9 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

10 Screening Order

11 In this case, plaintiff’s 80-page complaint reads as a laundry list of grievances concerning
12 his conditions of confinement at the California Medical Facility. *See* ECF Nos. 1 & 10
13 (complaining about inadequate medical care and disability accommodations, threats to his life
14 from staff and inmates, discrimination, harassment, that he should not be housed at the same
15 institution where his abusive ex-girlfriend works, being classified as a violent offender,
16 interference with his mail, an entitlement to resentencing, inadequate access to the library, not
17 being able to telephone his father, sexual assault, denial of a kosher diet, and denial of dental
18 treatment). The complaint is plainly deficient insofar as it attempts to bring in a single action
19 multiple, unrelated claims against multiple defendants. It is well settled that a claimant may not
20 proceed with various unrelated claims against separate defendants:

21 “The controlling principle appears in Fed. R. Civ. P. 18(a): ‘A party
22 asserting a claim to relief as an original claim, counterclaim, cross-
23 claim, or third-party claim, may join, either as independent or as
24 alternate claims, as many claims, legal, equitable, or maritime, as the
party has against an opposing party.’ Thus multiple claims against a
single party are fine, but Claim A against Defendant 1 should not be
joined with unrelated Claim B against Defendant 2.”

25 *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). Plaintiff’s claims encompass discrete events
26 involving separate defendants that are ill-suited to proceed in a single suit. Indeed, each subset of
27 allegations poses entirely separate questions – both legally and factually – from the others.
28 Plaintiff’s complaints will be dismissed with leave to amend.

Leave to Amend

Plaintiff is cautioned that any amended complaint must identify as a defendant only persons who personally participated in a substantial way in depriving him of his constitutional rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if he does an act, participates in another's act or omits to perform an act he is legally required to do that causes the alleged deprivation). Plaintiff may also include any allegations based on state law that are so closely related to his federal allegations that "they form the same case or controversy." *See* 28 U.S.C. § 1367(a).

The amended complaint must also contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).

Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *See George*, 507 F.3d at 607. Nor, as mentioned above, may he bring unrelated claims against multiple defendants. *Id.*

Any amended complaint must be written or typed so that it so that it is complete in itself without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114 F.3d 1467, 1474 (9th Cir. 1997) (the "amended complaint supersedes the original, the latter being treated thereafter as non-existent.") (*quoting Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967)).


Any amended complaint should be as concise as possible in fulfilling the above requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of procedural or factual background which has no bearing on his legal claims. He should also take pains to ensure that his amended complaint is as legible as possible. This refers not only to penmanship, but also spacing and organization. Plaintiff should carefully consider whether each of the defendants he names actually had involvement in the constitutional violations he alleges. A "scattershot" approach in which plaintiff names dozens of defendants will not be looked upon favorably by the court.

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Conclusion

1. Plaintiff's application to proceed in forma pauperis (ECF No. 2) is granted;
2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in accordance with the notice to the California Department of Corrections and Rehabilitation filed concurrently herewith;
3. Plaintiff's request for appointment of counsel (ECF Nos. 1 & 8) is denied without prejudice;
4. Plaintiff's complaints (ECF Nos. 1 & 10) are dismissed with leave to amend within 30 days from the date of service of this order; and
5. Failure to comply with any part of this this order may result in dismissal of this action.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE